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The Role of the Apex Court: Removing Constraints towards Empowering Women

MUKUTA MONI BAYAN¹

ABSTRACT

Indian women work a lot, but their work is predominantly at home in service of other members of their household. Women are an integral part of our society and have an important role not only for rearing a child from its birth but also the development of a man's personality. In spite the fact that the women's contribution to the progress of the country is not less to that of their male counterpart, still they experience a number of limitations that restrict them from realizing their potential growth. The framers of the Constitution were also well aware of in equal treatment meted out to the fair sex from the time immemorial. In our country the history of suppression of women is very old and long which is responsible for including general and special provision for upliftment and development of the status of women. However still various constraints towards attainment of empowerment of women and generating awareness among them regarding important areas, so that they are able to live their life in an efficient way.

Keywords: *women, rights, awareness, empowerment.*

I. INTRODUCTION

“The home where there is respect for women is like the abode of Gods themselves, but where they are not respected, all other form of worship are fruitless.”

~Manu

It is said that behind every successful man there is women. This only shows that women are an integral part of our society. The Indian philosophy poses the women with dual character i.e. patient, benevolent and on the other hand she is considered aggressor and represents “Shakti”. One concept of woman as Shakti (the primal energy force) finds expression in the epic “Mahabharata”.² In this epic woman is glorified as a “light of the house, mother of the Universe and supporter of the earth and all its forests. The epic further says that there is no guru like the mother.³ Scholars believe that in ancient India, women enjoyed equal status with men in all fields of life. During the Vedic period, women played active role in the intellectual & social life

¹ Author is an Assistant Professor at Bongaigaon Law College, India.

² Dr. Nuzhat Parveen Khan, women & the Law, Universal Law Publishing, 1st edition 2016, p 6, para 3.

³ Id

of the country. They learnt art, music and warfare. They studied in Gurukul and enjoyed liberty. However, in Medieval period, when foreign invasions took place their movement were restricted even deprived of education and participation in community affairs. However, in the British period the position of women had drastically changed. Progressive legislation social reforms in respect of problems like sati, dowry, polygamy, child marriage have been introduced. In 1927, All India Women's Conference was formed and it proved to be a crucial movement towards the right to equality of women.

According to a report of the United Nations published in 1980_ "women constitute half of the world population, perform nearly two thirds of work hours, receive one tenth of the world income and own less than one hundred percent of world's property. Another Report also unveils the fact that more than 70 percent people living on less than \$1 per day are women⁴Of the 192 countries in the world, only 13 have a female head of state.⁵

II. CONSTITUTIONAL PROVISIONS RELATING TO WOMEN IN INDIA

The Constitution of India is the supreme legal document which came into force from 26th January, 1950. The constitution is the basic document which governs our rights and lays down the structure by which we are govern. Some provisions have been provided specifically for protection and promotion of the rights of woman. The Preamble is an introduction to the Constitution of India. It does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. The Preamble is a part of the Constitution of India.⁶The Preamble seeks to secure to its citizens' "justice: social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity assuring the dignity of the individual. Social Justice means abolition of all sorts of inequalities arising from wealth, status, race, religion and the like.⁷ Part III of the Constitution deals with the fundamental rights and these provisions have been enshrined in Articles 12 to 35, which are applicable to all the Citizens irrespective of sex but there are some provisions which protects only the rights of women specifically. **Article 14** rightly states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In a landmark judgement⁸ the Apex Court held that a woman shall not be denied employment merely on the ground that she is a women as it amounts to violation

⁴ Facts on women at _ILO available at_www.ilo.org.

⁵ Ibid

⁶ Keshava Nanda Bharti V. State of Kerala,AIR1461,(1973)8

⁷ Dr.Aparajita Bauah, Preamble of the Constitution of India An Insight and Comparison With other Constitution,p.53(2007)

⁸ Appareal Export Promotion Council v. A.K Chopra, AIR 1999 SC 625

of Article 14. However, Article 15(3) provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. Thus this Article permits the status to positively discriminate in favour of women to make special provisions to ameliorate the social, economic and political conditions and accord them parity. This article recognizes the fact that the women in India have been socially and economically handicapped for centuries and as a result they can't fully participate in the socio economic growth of the country. The object of the article 15(3) is to improve the status of the women. Article 21 of the Constitution lays down that no person shall be deprived of his life or personal liberty except according to "Procedure established by law". Life and personal liberty are correlated and can be enjoyed equally by males and females. "The meaning and content of the Fundamental Rights guaranteed in the Constitution of India are sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. **Article 39(a)** of the Constitution provides for that men and women equally have the right to an adequate means of livelihood. And the state may not be compelled by affirmative action to provide adequate means of livelihood but not to deprive a person of this right without just and fair procedure.⁹ According to Article 39(d) the state has to ensure that there should be equal pay for equal work for both men and women. Fundamental Duties are provided under Part IV of the Constitution of India. This Article was inserted by 42nd amendment Act, 1976. Article 51A(e) provides that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. This provision confirms the intention of the legislators was not only to provide special rights to women but also duties towards women.

III. ROLE OF THE APEX COURT TOWARDS THE EMPOWERMENT OF WOMEN

The law through legislative or administrative responses to new social conditions and ideas, as well as through judicial re-interpretations of constitutions, statutes or precedents increasingly not only articulates but sets the course for major social changes.¹⁰ Society is not static rather dynamic. To meet the need of the changing society the framers of the Constitution perhaps made the provision of Article 368 and the courts have been entrusted the function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions. Thus a notable feature of the Constitution is that it accords a dignified and crucial position to the judiciary. India has a unified judicial system with the Supreme Court standing at the apex. The Supreme

⁹ *Olga Tolls v Bombay Municipal Corporation* AIR1986 SC 180.

¹⁰ W. Friedmann, *Law in a Changing Society*, 2nd Edition, P-513, Para 1

Court in India enjoys the topmost position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and guardian of the people's fundamental rights. When discrimination against women is prevalent in various forms and in different spheres, the Judiciary has an important role towards protecting rights of women uplifting their position, empowering women and dispenses justice.

It is a known fact that women have been struggling for decades trying to fight the patriarchal mindset and stereotypes which come along with it. When discrimination against women is prevalent in various forms and in different spheres, the Judiciary has an important role to play in reflecting women's strength, redefining patriarchal laws and paving a way ahead for women when patriarchal mindset, stereotypical notions. There are lots of instances where the Apex Court through its wise interpretations always thriving to equality to both sexes, since equality is the basic feature of the Constitution. In a leading case *Githa Hariharan & another Vs Reserve Bank of India & another*¹¹ It established for the first time that a natural guardian referred to in the Hindu Minority & Guardianship Act 1956 can be a father or a mother: whoever is capable of and available for taking care of the child and is deeply interested in the welfare of the child, and that need not necessarily be the father. Here the petitioner challenged the constitutional validity of this provision enshrined in Section 6 (a) of Hindu Minority and Guardianship Act (1956), in the Supreme Court on grounds that it violates the right to equality guaranteed under Articles 14 and 15 of the Indian Constitution. The Supreme Court, relying on gender equality principles enshrined in the Indian Constitution, CEDAW and UDHR, widely interpreted the word “after” in the provision and upheld the constitutional validity of Section 6(a), 1956. It held that both the father and mother are natural guardians of a minor Hindu child, and the mother cannot be said to be natural guardian only after the death of the father as that would not only be discriminatory but also against the welfare of the child.

The position of women regarding inheritance of her father's property has also been changed. Now a woman has equal rights over parental property according to the 2005 amendment in the Hindu Succession Act 1956. The Hindu Succession Act, which was amended in 2005, gives daughters equal rights in their ancestral assets. The SC while giving a judgement in *Bineeta Sharma V. Rakesh Sharma*¹² said that a daughter can claim equal share in family property irrespective of whether her father was alive or not at the time of the amendment. “Daughters will have coparcenary rights even if their father was not alive when the Hindu Succession (Amendment) Act” .A coparcener is the one who shares equally in the inheritance of an

¹¹ AIR 1999,2 SCC 228

¹² (2020)9 SCC 1

undivided property. Before the 2005 amendment, there was a marked discrimination in determining the rights of a son and daughter in claiming inheritance. A son could claim a share in HUF property as a matter of right, while a daughter, ceased to have any such right upon her marriage as she was considered to be a part of her husband's family. Even after the amendment, judgments of various courts and the Supreme Court itself in *Prakash v Phulvati*¹³ held that a daughter could be eligible to be a co-sharer only if the daughter and the father were alive as of September 9 2005 (the date of the amendment). The Supreme Court, by virtue of the *Vineeta Sharma* judgment, extended the benefit of the 2005 amendment and legitimized the position of women as an integral part of their father's family.

The court has also sought to provide for the safety of women at workplace by protecting them from sexual harassment. The court framed detailed guidelines in the *Vishakha v State of Rajasthan*¹⁴ (1997) case for employers to follow and provide a mechanism for redressal of grievances of employees. An incident of sexual harassment of a female at the place of work amounts to violation of her Fundamental Right to gender equality under Article 16(2).¹⁵ The Supreme Court has declared sexual harassment of working women at her place of work as amounting to violation of rights of gender equality and right to life and liberty which is a clear violation of Articles 14, 15 & 21 of the Constitution. The directions issued by the court place certain obligations on the employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women in workplaces whether public or private sector. Also an appropriate complaint mechanism should be created in the organization for redress made by the victim. These guidelines were eventually formalized as legislation with the passing of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, a vital law to protect millions of working women in our country.

One of the many gender discriminations from which women were battling ended in their favour as the Supreme Court of India in a landmark Judgement in ***The Secretary, Ministry of Defence v Babita Puniya & Ors. (2020)***¹⁶ ordered that all women army officers are eligible for permanent commissions, allowing them to be in commanding roles. Women officers are now on par with their male counterparts when it comes to promotions, rank, benefits and pensions, thereby fortifying their position in the defense sector. It also provides equal opportunity for

¹³ (2016) 2 SCC 36 ;

¹⁴ *Vishakha v.State of Rajasthan*,AIR 1997 SC 3011

¹⁵ *Apparel Export Promotion Council v.A.K.Chopra*,AIR 1999 SC 625:(1999) 1 SCC 759

¹⁶ 2020 7 SCC 469

women in the Indian Army by providing them long term job security, and the judgment is regarded as the watershed moment in the history of the Indian army.

In **Shayra Bano v Union of India**¹⁷ (2017) case, the court declared that the practice of instant triple talaq (talaq-e-bidat) is against the basic tenets of the Quran. Talaq-e-bidat is a practise which gives a man the right to divorce his wife by uttering 'talaq' three times in one sitting, without his wife's consent. The court directed the Centre to pass legislation in this regard, which led to the Muslim Women (Protection of Rights of Marriage) Act, 2019. As per the Act any Muslim husband who pronounces triple talaq on his wife shall be punished with imprisonment which may extend up to three years and fine. The judgment also saw a heartening departure from the conservative approach taken by the court in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985).

The court also departed from its traditional faith in issuing judgments in matters of faith while passing its verdict in the **Sabrimala** (2019) issue. The court held that devotion cannot be subjected to gender discrimination and permitted the entry of women of all ages into the Sabarimala Temple despite a century's old custom banning the entry of menstruating women.

The court also affirmed the right of a woman in exercising her sexual freedom in personal sphere with the **Joseph Shine v Union of India** (2018) judgement wherein the court placed its reliance on the right to privacy flowing from Article 21 and, declared as unconstitutional, Section 497 of the Indian Penal Code, which gives a husband the exclusive right to prosecute his wife's lover even as similar rights were not conferred on a wife to prosecute the woman with whom her husband has committed adultery.

In a leading case *Aparna Bhat and others v State of Madhya Pradesh and others*¹⁸ the Apex Court stated that gender sensitization to be part of Law Syllabus. The Bench directed that the Bar Council of India (BCI) should also consult subject experts and circulate a paper for discussion with law faculties and colleges/universities in regard to courses that should be taught at the undergraduate level, in the LL.B. program. The BCI shall also require topics on sexual offences and gender sensitization to be mandatorily included in the syllabus for the All India Bar Examination.

The Apex Court even gave an excellent interpretation about the conception that at house makers do not "Work" Or that they do not add economic value to the household & stated it to be a problematic idea. In an appeal *Kirti vs. Oriental Insurance Company Ltd*, arising out of a motor

¹⁷ 2017 SCC

¹⁸ 2021 SCC Online 230

accident compensation claim, the Supreme Court on 5th January 2021 observed that the conception that house makers do not "work" or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome. A Bench comprising CJI NV Ramana, Justices S. Abdul Nazeer and Surya Kant noted that in India, according to the 2011 Census, nearly 159.85 million women stated that "household work" was their main occupation, as compared to only 5.79 million men. "The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a house maker undertakes. A house maker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle." the Bench observed

Budhadev Karmaskar Vs State of West Bengal ¹⁹The Supreme Court stood for the rights of sex workers, holding they also have a right to live with dignity under Article 21 of the Constitution of India. It directed that the Central and the state governments, through social welfare boards, should prepare schemes for rehabilitation all over the country for physically and sexually abused women.

IV. CONCLUSION

The women play pivotal role in every spheres of life. Some Indian women are global leaders and powerful voices in different fields but most women and girls in India do not fully enjoy many of their rights due to deeply entrenched patriarchal views, norms, traditions and structures. But time is dynamic not static. Due to industrialization & urbanization new social norms and values emerged. After Independence of our country various legislations have been passed for the protection and upliftment of women's rights. The Central Government has not only made provisions for upliftment and protection of working women but the Apex Court of the Country has given wide interpretation to those provisions to meet the changing conditions of the society to maintain the goal of equality and justice. The Indian judiciary has also played a very important role in interpreting the law to uphold women's rights and dignity in India, resulting in several landmark judgments. Every year we celebrate International Women's Day on 8th March. Women empowerment means the status of women from all the angles whether it is

¹⁹ Cr.App.no135 Of 2010

social, political, economic etc. India is one of the few countries in the world where maximum laws have been passed to protect the rights of women. There is no better tool for the development of women than empowerment. People think when girls attain the age of puberty she should get married due to societal pressure. But we should change our opinion, instead of being over protected; we should raise them in a way that they can handle the situations on their own. Mahatma Gandhi rightly remarked that the status of women would not change merely by bringing legislations, it must be supported by change in the women's social circumstances and situations and also man's sexist attitude to women. To conclude we must admit a woman has to be mentally strong and educated also. Education is a very powerful weapon to become truly empowered which will not only enhance their quality while decision making but also contribute to the country's economic growth.
